

in favor of a continuance of the injunction. A number of depositions, and written evidence, to be used at the hearing, had been filed under an agreement ; the effect of which, the Chancellor said, was to show that "the complainant occupied a position in the business, with the knowledge and consent of both parties, which made him, as to third persons, a partner in the concern." And also that the concern was in very embarrassed circumstances, if not actually insolvent. The question of partnership was minutely and elaborately considered by the Chancellor, who decided that a partnership did exist as to third persons, though not as between the parties themselves. The case was again argued at the same term, on the appointment of a receiver, and in his opinion, on that occasion, he entered into a further consideration of the same question, deciding as before, the main ground relied on, being the fact of the complainant having been allowed for his services, a share of the profits. By the order filed with this opinion, on the 1st of February, 1847, George M. Gill, was appointed receiver, who duly qualified as such. From this order, and from those granting and continuing the injunction, the defendant appealed. On the 27th of April, 1847, the receiver having reported sales of the property to a large amount, an order was passed directing him to notify creditors of the firm to file their claims, and the case was afterwards referred to the Auditor to make a statement of the claims filed, several of which were judgments recovered against E. M. Kerr, by citizens of the state of New York ; and an account. The Auditor in his report, filed 12th of October, 1847, stated that, with a few exceptions, all the claims filed, appeared to have originated since the formation of the partnership ; that it would appear from these, that the defendant's course was to deal in his own name, and that there was nothing to show that any one of them was entitled to preference over the rest. His account was stated accordingly, but was excepted to, and overruled, as to this mode of treating the claims, by the Chancellor. The Court of Appeals, at June term, 1848, reversed the orders appealed from, and remanded the cause to this court, "for such further proceedings, as the nature of the